

EXHIBIT 6

Why REX pays buyer agents and uses MLSs — sometimes

by Andrea V. Brambila October 01, 2021

This is Part 1 of a two-part interview with REX Real Estate General Counsel Michael Toth. Check back on Monday for Part 2 in the series.

Discount brokerage [REX Real Estate](#) has made a name for itself as an industry firebrand, filing an [antitrust lawsuit against Zillow](#) and the [National Association of Realtors](#) and touting that it doesn't pay buyer agents and doesn't use multiple listing services.

But the company's business model, which employs salaried agents and charges homesellers a [2-percent listing fee](#), is more nuanced than that. Turns out that REX sometimes does use MLSs and sometimes does pay buyer agents.

To gather some nitty-gritty details, Inman twice spoke to REX's general counsel, Michael Toth, over Zoom.

In part 1 of this two-part series, Toth clarified many aspects of REX's operations, from when the brokerage's listings appear on MLSs and when they pay buyer agents to what the company anticipates will happen to buyer agent commissions and whether or not they want MLSs to disappear. In part 2, we'll dive into REX's work with the U.S. Department of Justice (DOJ).

This interview has been edited for length and clarity.

Inman: I was looking at your [LinkedIn](#) before this, and you've had quite a career. You were a Marine officer, a judicial law clerk, you worked at Palantir for about a year and then an appeals court judge and Special Counsel for Texas Attorney General. What brought you to REX?

Michael Toth: The challenge of really reforming a major industry. When you get back to the transactional costs, it ends up being the one last super high commission environment in retail services.

When there's fewer home transactions because the cost of transacting is so high, all of the services that go into home transactions also suffer and there's less turnover. I was just looking at this broad thicket of challenges and I said, "Oh my gosh, you know, I want to get involved in this."

Most of your listings are not listed in the MLS at all.

That's correct. We operate independent from the MLS. We want to keep the consumer in control and we want the process to play out how they want it to play out.

We've always looked to align with our consumers around flexibility, empowerment, and doing what is traditionally done, but just doing it better and providing a full range of services, but in a tech-forward, data-driven way.

Our view on the MLS has been that it's an agent-driven process. When the transaction finally happens, we fall back to this very agent-centered system of rules that drives the cost up, even if the consumer herself has found the home online.

Even though the work has been in great degree internalized by the consumer, the transaction economics are still set by these rules that were written in a world before the internet, in a world before digital technology, in a world before direct marketing and all the kinds of technologies that we have now.

What if a seller wants their home on the MLS?

In those instances, and we [talked about this in the \[Zillow\] case](#), what we've talked to our customers about is co-listing, which puts the home back on the MLS through an MLS agent. But again, at the end of the day, it's the consumer's choice.

In this particular real estate market, we may be able to sell the home ourselves off the MLS in a short period of time and then the home doesn't need to be co-listed. It also may be that the consumer doesn't want the home to be listed on the MLS for any number of different reasons.

It's the consumer's home, it's their asset, they can decide how they want to process it. They may decide that they're comfortable with the technology and the solutions that we're delivering.

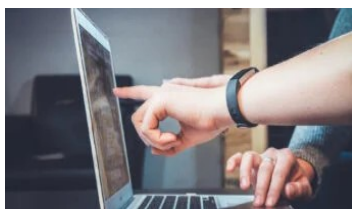
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One of the big arguments for being on the MLS has to do with fair housing, making sure all buyers in the market can see the inventory of homes. How does REX address those concerns?

We want homes to be affordable and accessible to the whole range of consumers. One of the long-running issues around the MLS is just the cost of transactions puts homes out of reach.

It's one thing to provide consumers visibility on all homes, but if they still can't afford it, what can you do? You can just look at them, but you can't actually purchase the asset or raise capital through financing to own the asset. That's a critical point.

The second point is the MLS is not a customer-facing entity. Customers, unless we join an MLS and pay the MLS membership, can't go and look directly at what's on sale on the MLS. It's an agent-facing interface. It's an agent-to-agent market and so that's why the rules around web display of listings for sale are so important.

There's several [ongoing federal class actions](#) — REX is not a part of any of them, but obviously we're watching them because they affect our space — that are dealing with the high commission costs of buying and selling homes in the U.S.

[One of these](#) is brought by a group of homebuyers. They're saying the industry has said these rules around commissions are benefiting the buyer because we can finance the cost of the home which includes these commissions because the seller is paying them and presumably they're baked into the price.

Well that's another way of saying that you have to borrow more. That's another way of saying that there's a certain number of people who won't be able to borrow more because the ultimate price is beyond their ability to borrow.

This idea of "everything can just be financed" is problematic because people can only finance up to a certain point. There's a number of issues around the industry which we feel are preventing true affordability, preventing true access.

The argument against [those lawsuits] is that lots of buyers won't be able to afford a home if they have to pay their buyer agent directly, so that will knock people out of the market. Some people have said that you can also finance it if the buyer is paying their agent directly, so that's the solution. Is that what you think should replace it or is there another solution that you're thinking? Or do you think buyer's agents should go extinct?

No, I think competition is the answer. Right now we have a third-party payer system for buy-side agencies. It's a third party, the seller, paying the buy-side agency, and so it's not negotiated directly between the person who is reportedly receiving the services, the buyer, and the agent who is

providing those services, the buy-side agent.

So I think the first move is to have real competition and real conversation between the service provider and the service recipient over what it should cost. I would also push back on “buyers won’t be able to afford it.” It’s in the sale price and therefore you know they’re paying for it now.

There very well may be buy-side agents out there who are willing to charge less, except they never get to have that conversation with their buyer, and that’s why things like rebates become popular in the places where they’re allowed.

We want the conversation to happen between the consumer and her agent just like in essentially all other agency businesses in this country.

It sounds like you’re saying that the cost of buyer agents will get lower if there’s competition and that’s how consumers will pay for it. I bought a house last year and I could not have afforded to buy my house and pay the buyer’s agent even half of what she got paid. So how do you overcome that?

In our company, when we’re listing a home, oftentimes a homebuyer will come forward who’s represented by an agent, and for us the home isn’t on the MLS so we have not had to put an ex ante preset buy-side commission on the home and then it becomes a matter of negotiation.

In our experience, the negotiated amount of what the buy-side commission ends up being when there’s a real conversation between the buyer’s agent and the consumer ends up being quite a bit lower than the going rate that’s offered when there’s a preset ex ante offer.

But I still could not have afforded to pay my agent myself. So is the solution then to roll it into the mortgage? Or is there something else? Because the buyer’s agents are going to get paid something, right, even if it’s lower?

We don’t know [what] the price would have been if there was a truly competitive market. Our information in terms of actually negotiating these things out is that they end up negotiating in at lower prices. But yeah I do take your point that it is important to think about ways in which obviously there are various pathways to covering these transaction costs.

There has to be a lot of attention around bringing the transaction costs down. Now once that’s done, or as it’s being done, thinking about how you can easily finance it, how can we roll it into the mortgage, what’s a straightforward way to sort of chip away at those costs, I think is perfectly appropriate.

But I think so long as we have this sort of third-party system, it’s like other third-party systems — it’s going to elevate the cost and there’s not going to be real conversations about bringing that down, and that does have this underlying effect on affordability, accessibility concerns.

Your website says: “Your REX Agent will ask the buyer to pay their own agent’s fee, which can often be financed as a part of the home purchase.” That’s why I’m asking.

Yes, the buyer can finance the buy-side agent fees. Obviously, the way the industry is structured outside of REX, the seller is the nominal payer.

It's important to note the buyer is the only person that brings money to the table in any real estate transaction, so the seller is using the proceeds from the buyer to pay something on behalf of the buyer, but that's how the industry rules are structured.

The key point is giving the buyer more leverage, giving the buyer a seat at the table, establishing an agency relationship where the buyer and the buyer's agent are really shoulder to shoulder.

REX doesn't pay buyer's agents, right?

When we're representing a seller who is selling a home and there's an agent who's representing the buyer, then we have this process of negotiation.

If the parties agree on a price for the buyer's agent, then, yes, we will obviously follow the agreement of the parties. This gets back to our ethos [that] the parties are responsible for the transaction and have a sense of their vision as to what works best and we just want to facilitate different options for that.

So in that instance, if we have a seller who's selling a home and there's an agent who's representing the buyer who's looking for a certain commission and the seller is willing to pay that commission once it comes up and it's negotiated, then absolutely with the seller's wishes we will represent that seller and pay out that commission at close.

Okay, so if you're representing the seller, you will pay a buyer's agent.

Absolutely. I think the nuance though is that what we don't do is offer just a preset ex ante [commission], regardless of whether the home sells in 15 minutes, regardless of whether it's a \$100,000 home or a \$500,000 home, regardless of the market conditions. We're not just going to offer anybody 3 percent for bringing a buyer. That is not our business model.

So that we don't do because, at the end of the day, is that really a way of serving the buyer, such that this large chunk of money — 3 percent on a \$500,000 home [is] \$15,000 — is just set in stone before the buyer ever shows up at the house? It's already spoken for. That just doesn't make any sense in the year 2021.

I don't think a lot of people in the industry know what you just told me, which is that you do pay buyer's agents, you just don't offer them a preset percentage. I was thinking of the [steering recordings](#) that you guys posted. Your customer service people told those agents that you don't pay buyer's agents.

Oh no, but we have some that say exactly what I just said. We have some that say, 'Look, we will take any offer for the buyer agent back to our seller and if our seller agrees to it, we'll pay it out,' which is the point that I was making before.

When we say that there's an issue with a preset ex ante rule that requires a certain price and it's effectively non-negotiable from there, that doesn't mean that the answer is no commissions are paid out. It's a process that the consumers who know what's in their own best interest will dialogue on during the course of the transaction.

REX provided examples of recordings where its customer service staff explain this and buyer agents still refuse to show REX homes:

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Do you think there shouldn't be an MLS at all?

No, we've never said that. The idea of bringing people together is important. It's sort of a straw man in the sense of what matters are rules that drive up cost. Rules that prevent accessibility. Rules that drive up affordability.

If you have an organization that brings people together, that's one thing. If you have an organization that's bringing people together and also setting really high transaction costs, that's something different.

All of our agents are licensed. We are part of the industry, but there's just aspects of the industry that we feel are not compatible with the consumer experience that we're trying to deliver.

So if an unrepresented buyer contacts a REX listing agent about a REX listing, how does REX handle that? Does it turn into a dual agency situation? Does the buyer pay anything in that situation?

It turns into a dual agency situation, which we're permitted by state law. We would represent the buyer at no cost to the seller.

If a buyer comes to us who's unrepresented and wants to buy one of our homes, we charge them zero for that because how can you charge much more than zero? They've come to you with the home that they want to purchase in mind, right? They found it.

That doesn't mean there doesn't need to be agency. There's still work to be done by an agent in terms of maintaining an arm's length transaction and making sure that the process goes smoothly.

People have mixed feelings about dual agency, like, 'Is everybody getting fiduciary representation?' It brings up those things. What are your thoughts on that?

I feel really bad about dual agency when the agency is collecting 5.5 or 6 percent. From a firm perspective, you have to set up appropriate checks and balances, which we do.

We have a system in place whereby the buyer agent is really representing the buyer. They truly have the autonomy and the authority to represent the buyer's interest. They're separate from the seller agent.

At the end of the day, what we can tell both those people in that transaction is this transaction is going to happen at a commission rate which may be one half of what the transaction costs would be if this home were listed on the MLS and had high commissions on both sides.

Nobody benefits from high transaction costs if you're a consumer. If you're an intermediary, everybody benefits from high transaction costs.

So, to be specific, it turns into a designated agency situation. So it's not the same agent representing the seller and the buyer; it's separate agents within that same brokerage.

Yeah, it's separate agents representing them.

In terms of what buyer's agents do, a lot of them would say finding the home is a very small part of what buyer's agents do. Can you elaborate a little bit more on what you think that buyer's agent's role is and how it should be compensated?

One of the things that I think agents do a lot of is searching for their next client. If you're in the industry, I think a lot of times you're thinking, "Well, the rational thing to do is just spend a lot of time on the potential next person."

Now in terms of what an agent does, every deal is different. Every client is different. The customer and her agent understand best what the needs of the customer is, what the complexity of the deal is, and how much time and effort really needs to go into that.

In how many transactions where REX is the listing agent does REX pay the buyer's agent?

The key point just right off the bat is the seller is paying the buyer's agent. The industry has always sort of revolved around the industry participants, as opposed to the human beings who are involved in the transaction: the moms and dads and the people for whom \$10,000 is real money.

If it's a home like in the DMV [Washington, D.C.-Maryland-Virginia area] or Northern California, it could be literally the price of a new car.

If we're representing a seller, we'll go to the seller and say, "Look, as part of this deal the buyer has made an offer in order for the buyer's agent to be compensated, but it's up to you as to whether you want to accept this offer. You are the consumer. This is your house and how you want to go on with your journey as a homeowner is up to you. It's your asset. We're here to serve. We're here to facilitate."

I think it might have been in 2019 or 2020 in at least 40 percent of our transactions our sellers ... paid out commissions to a buyer's agent.

We bring that to the sellers and if they agree that that's the right sum, it's their choice on how to transact — consistent with state and federal law, obviously.

But there's no legal requirement that says that the seller using the buyer's money has to pay an agent on the other side. It's an industry rule, which elevates commissions to the thousands of dollars in transactions, prevents competition, prevents consumer empowerment.

Do you have any idea what the range is in terms of what is offered to the buyer's agent in those 40 percent or so transactions? You guys take a 2 percent listing fee, so I assume this is on top of that. Would the buyer's agent get an average 2 percent or would they get less or would they get more?

The No. 1 number that just stands out to me is our average commission is 3.3 percent. That takes into consideration all of our transactions. There are some transactions where we have a salaried

agent from our company representing the buyer and there's no additional commission taken.

But then we have some transactions that are such that we're paying a negotiated commission to the outside agent representing the buyer. So if you look at all of our transactions together, we end up with real estate transactions around 3.3 percent, which is still markedly lower than the industry norm.

Going back to REX not using an MLS, I would imagine that sellers have questions about that because they have bought before and they know what an MLS is. What does REX tell sellers when they ask why REX doesn't use an MLS?

Right off the bat what REX is sharing with that seller is, "Look, if you go on MLS you know you're gonna have to make a preset offer of compensation. So automatically if you want to compete with the other offers on that marketplace, there's a sense that your offer has to be at the going rate." In as much as there are discounts, they are marginal discounts.

At the end of the day, we have an honest conversation about what transacting on that marketplace looks like and then we talk really positively about our model and what it does.

You can use marketing digitally to really try to present the home to the broadest range of consumers through all the different internet channels that are out there. So what we really want to do is provide optionality for our consumers to keep them in control.

I was thinking of all the ways that agents use MLS data. One of the things that they do is grab comps to come up with a list price. How does that work with REX? How do you get a comprehensive picture of the market without an MLS?

We're a data company also and we've got data scientists who are constantly looking at real estate trends, are constantly looking at markets, who are engaging in a whole variety of different data streams and data feeds to come up with what predicted days on market and a predicted price would be for any individual property.

But how do your agents get comps if they're not using an MLS?

What our folks are doing is looking at a wide variety of data sources. There are companies out there that we contract with who provide price estimation tools. You've got data sources that are out there that are looking at real estate comps and are providing their own statistical expertise on top of that.

Some of what we do is our data experts are finding the right data experts in the industry to provide information, then we obviously use our analytical skills on top of that to look at these data sources and arrive at a conclusion per an individual property or individual buyer's needs about what something's worth.

I read the comments on our stories and part of the reason I'm asking this is because that's one of the arguments against REX that gets brought out by some agents. They'll say, "Oh, the list price on this home was so low they really did a disservice to their seller," that sort of thing. What would you say to that?

I would find out what individual transaction the person's talking about. I would then go to that particular transaction using the records that we keep in the ordinary course of business around that transaction.

I would interview the seller. I would interview the agent. I would actually figure out what happened in the transaction. And then I would evaluate whether the claim is true or not.

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